

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2588**

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**Introduced by Assembly Member ~~Garrick Audra Strickland~~**

February 19, 2010

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~~An act to amend Section 40322.5 of the Health and Safety Code, relating to air pollution. An act to repeal and add Section 1781 of the Civil Code, and to add Section 383 to, and to repeal and add Section 382 of, the Code of Civil Procedure, relating to civil actions.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2588, as amended, ~~Garrick Audra Strickland. Regional air pollution control districts: governing board membership. Joinder: representative actions.~~

*Under existing law, if the consent of any person who should have been joined as a plaintiff cannot be obtained, that person may be made a defendant, and the complaint shall state the reason. Existing law authorizes one or more persons to sue or defend for the benefit of all if the question is one of a common or general interest of many persons, or if the parties are numerous and it is impracticable to bring them all before the court. The Consumers Legal Remedies Act permits a consumer who suffers any damage as a result of certain commercial practices to bring an action on the behalf of other consumers similarly situated, pursuant to specified procedures.*

*This bill would repeal and reenact the provisions described above and would create a comprehensive set of procedures to be followed in all class actions. The bill would establish the prerequisites for a class action and would prohibit the maintenance of a class action unless other criteria are met. The bill would provide a process for defining or*

*certifying a class, appointment of class counsel, notification to members of a class and payment for the notification, withdrawal by a member of a class, orders for the conduct of class actions, for the settlement, dismissal, or compromise of class actions, and for appeals from a class action. The bill would require a court that certifies a class for a class action to appoint class counsel pursuant to specified requirements. The bill would permit a court to award attorney's fees in class actions, except as specified. The bill would provide that its provisions are severable. The bill would also make a related statement of legislative findings and intent.*

~~Existing law requires the governing board of each regional air pollution control district, as defined, to include both county supervisors and mayors or city council members, as specified.~~

~~This bill would make technical, nonsubstantive changes to this requirement.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares that:*

2     *(a) Class action lawsuits are an important and valuable part*  
3     *of the legal system when they permit the fair and efficient resolution*  
4     *of legitimate claims of numerous parties by allowing the claims*  
5     *to be aggregated into a single action against a defendant that has*  
6     *allegedly caused harm.*

7     *(b) The lack of clear standards for the certification and*  
8     *management of class actions in California has led to abuses of the*  
9     *class action device that have harmed class members with legitimate*  
10    *claims as well as defendants who have acted responsibly, and these*  
11    *abuses have undermined public respect for our judicial system.*

12    *(c) It is the intent of the Legislature in enacting this act to do*  
13    *all of the following:*

14    *(1) Implement a uniform set of standards for the certification*  
15    *and management of all class actions in California that is modeled*  
16    *on Rule 23 of the Federal Rules of Civil Procedure and that will*  
17    *provide judges with adequate guidelines and tools for the fair and*  
18    *efficient oversight of class actions.*

1     (2) *Eliminate any presumption or policy in favor of class*  
2     *certification and allow class certification only when all*  
3     *requirements set forth in this act are satisfied.*

4     (3) *Create jobs and promote a more robust economy by creating*  
5     *some guidelines for class action litigation. Too often, frivolous*  
6     *lawsuits clog courts, harming businesses and consumers and*  
7     *draining California's economy. The growing number of abusive*  
8     *cases has cost businesses millions of dollars. This act will provide*  
9     *a balanced and fair set of standards and rules for class action*  
10    *lawsuits.*

11    (d) *It is the intent of the Legislature in enacting this act that all*  
12    *prior case law in conflict with this act shall be of no further force*  
13    *or effect after the enactment of this act.*

14    SEC. 2. *Section 1781 of the Civil Code is repealed.*

15    ~~1781. (a) Any consumer entitled to bring an action under~~  
16    ~~Section 1780 may, if the unlawful method, act, or practice has~~  
17    ~~caused damage to other consumers similarly situated, bring an~~  
18    ~~action on behalf of himself and such other consumers to recover~~  
19    ~~damages or obtain other relief as provided for in Section 1780.~~

20    ~~(b) The court shall permit the suit to be maintained on behalf~~  
21    ~~of all members of the represented class if all of the following~~  
22    ~~conditions exist:~~

23    ~~(1) It is impracticable to bring all members of the class before~~  
24    ~~the court.~~

25    ~~(2) The questions of law or fact common to the class are~~  
26    ~~substantially similar and predominate over the questions affecting~~  
27    ~~the individual members.~~

28    ~~(3) The claims or defenses of the representative plaintiffs are~~  
29    ~~typical of the claims or defenses of the class.~~

30    ~~(4) The representative plaintiffs will fairly and adequately~~  
31    ~~protect the interests of the class.~~

32    ~~(c) If notice of the time and place of the hearing is served upon~~  
33    ~~the other parties at least 10 days prior thereto, the court shall hold~~  
34    ~~a hearing, upon motion of any party to the action which is~~  
35    ~~supported by affidavit of any person or persons having knowledge~~  
36    ~~of the facts, to determine if any of the following apply to the action:~~

37    ~~(1) A class action pursuant to subdivision (b) is proper.~~

38    ~~(2) Published notice pursuant to subdivision (d) is necessary to~~  
39    ~~adjudicate the claims of the class.~~

~~(3) The action is without merit or there is no defense to the action.~~

~~A motion based upon Section 437c of the Code of Civil Procedure shall not be granted in any action commenced as a class action pursuant to subdivision (a).~~

~~(d) If the action is permitted as a class action, the court may direct either party to notify each member of the class of the action. The party required to serve notice may, with the consent of the court, if personal notification is unreasonably expensive or it appears that all members of the class cannot be notified personally, give notice as prescribed herein by publication in accordance with Section 6064 of the Government Code in a newspaper of general circulation in the county in which the transaction occurred.~~

~~(e) The notice required by subdivision (d) shall include the following:~~

~~(1) The court will exclude the member notified from the class if he so requests by a specified date.~~

~~(2) The judgment, whether favorable or not, will include all members who do not request exclusion.~~

~~(3) Any member who does not request exclusion, may, if he desires, enter an appearance through counsel.~~

~~(f) A class action shall not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given in such manner as the court directs to each member who was given notice pursuant to subdivision (d) and did not request exclusion.~~

~~(g) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The best possible notice of the judgment shall be given in such manner as the court directs to each member who was personally served with notice pursuant to subdivision (d) and did not request exclusion.~~

*SEC. 3. Section 1781 is added to the Civil Code, to read:*

*1781. Any consumer entitled to bring an action under Section 1780 may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, bring an action on behalf of himself or herself and the other consumers to recover damages or obtain other relief as provided for in Section 1780. These class actions shall be subject to the requirements and provisions set forth in Section 383 of the Code of Civil Procedure.*

1     *SEC. 4. Section 382 of the Code of Civil Procedure is repealed.*

2     ~~382. If the consent of any one who should have been joined as~~  
3 ~~plaintiff cannot be obtained, he may be made a defendant, the~~  
4 ~~reason thereof being stated in the complaint; and when the question~~  
5 ~~is one of a common or general interest, of many persons, or when~~  
6 ~~the parties are numerous, and it is impracticable to bring them all~~  
7 ~~before the court, one or more may sue or defend for the benefit of~~  
8 ~~all.~~

9     *SEC. 5. Section 382 is added to the Code of Civil Procedure,*  
10 *to read:*

11     *382. If the consent of any one who should have been joined as*  
12 *plaintiff cannot be obtained, he or she may be made a defendant,*  
13 *the reason being stated in the complaint.*

14     *SEC. 6. Section 383 is added to the Code of Civil Procedure,*  
15 *to read:*

16     *383. (a) One or more members of a class may sue or be sued*  
17 *as representative parties on behalf of all members of the class only*  
18 *if all of the following are true:*

19     *(1) The class is so numerous that joinder of all members is*  
20 *impracticable.*

21     *(2) There are questions of law or fact common to the class.*

22     *(3) The claims or defenses of the representative parties are*  
23 *typical of the claims or defenses of the class.*

24     *(4) The representative parties will fairly and adequately protect*  
25 *the interests of the class.*

26     *(b) An action may be maintained as a class action only if the*  
27 *prerequisites of subdivision (a) are satisfied, and any of the*  
28 *following are true:*

29     *(1) The prosecution of separate actions by or against individual*  
30 *members of the class would create a risk of either of the following:*

31     *(A) Inconsistent or varying adjudications with respect to*  
32 *individual members of the class that would establish incompatible*  
33 *standards of conduct for the party opposing the class.*

34     *(B) Adjudications with respect to individual members of the*  
35 *class that would, as a practical matter, be dispositive of the*  
36 *interests of the other members not parties to the adjudications or*  
37 *substantially impair or impede their ability to protect their*  
38 *interests.*

39     *(2) The party opposing the class has acted or refused to act on*  
40 *grounds generally applicable to the class, thereby making*

1 *appropriate final injunctive relief or corresponding declaratory*  
2 *relief with respect to the class as a whole.*

3 *(3) (A) The court finds all of the following:*

4 *(i) That the questions of law or fact common to the members of*  
5 *the class predominate over any questions affecting only individual*  
6 *members.*

7 *(ii) That the evidence likely to be admitted at trial regarding*  
8 *the elements of the claims for which certification is sought and of*  
9 *the defenses to them is substantially the same as to all class*  
10 *members.*

11 *(iii) That a class action is superior to other available methods*  
12 *for the fair and efficient adjudication of the controversy.*

13 *(B) The matters pertinent to these findings include:*

14 *(i) The interest of members of the class in individually*  
15 *controlling the prosecution or defense of separate actions.*

16 *(ii) The extent and nature of any litigation concerning the*  
17 *controversy already commenced by, or against, members of the*  
18 *class.*

19 *(iii) The desirability or undesirability of concentrating the*  
20 *litigation of the claims in the particular forum.*

21 *(iv) The difficulties likely to be encountered in the management*  
22 *of a class action.*

23 *(c) (1) (A) If a person sues or is sued as a representative of a*  
24 *class, the court shall, at an early practicable time, determine by*  
25 *order whether to certify the action as a class action.*

26 *(B) An order certifying a class action shall define the class and*  
27 *the class claims, issues, or defenses, and shall appoint class*  
28 *counsel as provided under subdivision (g).*

29 *(C) An order under this subdivision may be altered or amended*  
30 *before final judgment.*

31 *(2) Upon motion of any party, the court shall hold a hearing on*  
32 *class certification. The court shall make a certification*  
33 *determination on the basis of a written order addressing all factors*  
34 *required by subdivisions (a) and (b) and shall specify the evidence,*  
35 *or lack of evidence, on which the court has based its decision.*

36 *(3) A court shall not certify that an action may be maintained*  
37 *as a class action unless, on the basis of a full record on the relevant*  
38 *issues, it determines that the action complies with all requirements*  
39 *for certification set forth in subdivisions (a) and (b). The court's*  
40 *obligation to make these determinations is not lessened by an*

1 *overlap between a requirement set forth in subdivisions (a) and*  
2 *(b) and a merits issue.*

3 *(4) The determination that an action may be maintained as a*  
4 *class action shall not relieve any member of the class from the*  
5 *burden of proving all elements of the member's cause of action,*  
6 *including individual injury and the amount of damages.*

7 *(5) (A) For any class certified under paragraph (1) or (2) of*  
8 *subdivision (b), the court may direct appropriate notice to the*  
9 *class.*

10 *(B) For any class certified under paragraph (3) of subdivision*  
11 *(b), the court shall direct to class members the best notice*  
12 *practicable under the circumstances, including individual notice*  
13 *to all members who can be identified through reasonable effort.*  
14 *The notice shall concisely and clearly state the following in plain,*  
15 *easily understood language:*

16 *(i) The nature of the action.*

17 *(ii) The definition of the class certified.*

18 *(iii) The class claims, issues, or defenses.*

19 *(iv) That a class member may enter an appearance through*  
20 *counsel if the member desires.*

21 *(v) That the court will exclude from the class any member who*  
22 *requests exclusion, and state when and how members may elect*  
23 *to be excluded.*

24 *(vi) The binding effect of a class judgment on class members*  
25 *under paragraph (6).*

26 *(C) Unless the parties agree otherwise, the proponents of the*  
27 *class shall bear the expense of notification required by this*  
28 *subdivision. The court may require other parties to the litigation*  
29 *to cooperate in securing the names and addresses of the persons*  
30 *within the class for the purpose of providing individual notice, but*  
31 *any costs incurred by the party in providing this cooperation shall*  
32 *be paid initially by the party claiming the class action. Upon*  
33 *termination of the action, the court may allow as taxable costs all*  
34 *or part of the expenses incurred by the prevailing party.*

35 *(6) The judgment in an action maintained as a class action*  
36 *under paragraph (1) or (2) of subdivision (b), whether or not*  
37 *favorable to the class, shall include and describe those whom the*  
38 *court finds to be members of the class. The judgment in an action*  
39 *maintained as a class action under paragraph (3) of subdivision*  
40 *(b), whether or not favorable to the class, shall include and specify*

1 or describe those to whom the notice provided in paragraph (5)  
2 of this subdivision was directed, and who have not requested  
3 exclusion, and whom the court finds to be members of the class.

4 (7) When appropriate, an action may be brought or maintained  
5 as a class action with respect to particular issues, or a class may  
6 be divided into subclasses and each subclass treated as a class,  
7 and the provisions of this section shall then be construed and  
8 applied accordingly.

9 (d) In the conduct of actions to which this section applies, the  
10 court may make appropriate orders:

11 (1) Determining the course of proceedings or prescribing  
12 measures to prevent undue repetition or complication in the  
13 presentation of evidence or argument.

14 (2) Requiring, for the protection of members of the class or  
15 otherwise for the fair conduct of the action, that notice be given  
16 in the manner as the court may direct to some or all of the members  
17 of any of the following:

18 (A) Any step in the action or of the proposed extent of the  
19 judgment.

20 (B) The opportunity of members to signify whether they consider  
21 the representation fair and adequate, to intervene and present  
22 claims or defenses, or otherwise to come into the action.

23 (C) A proposed settlement by a defendant that is not approved  
24 by class counsel or class representatives in which class members  
25 would be given the opportunity to present a claim and obtain  
26 compensation on any terms and conditions as the defendant, with  
27 the court's approval, may propose. In determining whether to  
28 approve a defense-sponsored settlement, the court shall follow the  
29 provisions set forth in subdivision (e).

30 (3) Imposing conditions on the representative parties or on  
31 intervenors.

32 (4) Requiring that the pleadings be amended to eliminate  
33 allegations as to representation of absent persons, and that the  
34 action proceed accordingly.

35 (5) Addressing procedural matters within the case that are  
36 similar. These orders may be altered or amended as may be  
37 desirable from time to time.

38 (6) Except for good cause shown, staying all discovery directed  
39 solely to the merits of the claims or defenses in the action until the



1 court has issued its written decision regarding certification of the  
2 class.

3 (e) (1) (A) The court shall approve any settlement, voluntary  
4 dismissal, or compromise of the claims, issues, or defenses of a  
5 certified class.

6 (B) The court shall direct notice in a reasonable manner to all  
7 class members who would be bound by a proposed settlement,  
8 voluntary dismissal, or compromise.

9 (C) The court may approve a settlement, voluntary dismissal,  
10 or compromise that would bind class members only after a hearing  
11 and on finding that the settlement, voluntary dismissal, or  
12 compromise is fair, reasonable, and adequate.

13 (2) The parties seeking approval of a settlement, voluntary  
14 dismissal, or compromise under paragraph (1) shall file a  
15 statement identifying any agreement made in connection with the  
16 proposed settlement, voluntary dismissal, or compromise.

17 (3) In an action previously certified as a class action under  
18 paragraph (3) of subdivision (b), the court may refuse to approve  
19 a settlement unless it affords a new opportunity to request exclusion  
20 to individual class members who had an earlier opportunity to  
21 request exclusion but did not do so.

22 (4) (A) Any class member may object to a proposed settlement,  
23 voluntary dismissal, or compromise that requires court approval  
24 under paragraph (1).

25 (B) An objection made under this paragraph may be withdrawn  
26 only with the court's approval.

27 (f) The courts of appeal shall hear appeals for orders of the  
28 superior court granting or denying class certification if a notice  
29 of appeal is filed within 20 days after service of a written notice  
30 of entry of an order granting or denying a class certification  
31 motion. The failure of a party to appeal from an order granting  
32 or denying a class certification motion shall not bar that party  
33 from raising issues concerning class certification in any later  
34 appeal in the case. An appeal does not stay proceedings in the  
35 trial court unless the trial judge or the court of appeal so orders.

36 (g) (1) (A) Unless a statute provides otherwise, a court that  
37 certifies a class shall appoint class counsel.

38 (B) An attorney appointed to serve as class counsel shall fairly  
39 and adequately represent the interests of the class.

40 (C) (i) In appointing class counsel, the court shall consider:

1     (I) The work counsel has done in identifying or investigating  
2     potential claims in the action.

3     (II) Counsel's experience in handling class actions, other  
4     complex litigation, and claims of the type asserted in the action.

5     (III) Counsel's knowledge of the applicable law.

6     (IV) The resources counsel will commit to representing the  
7     class.

8     (ii) In appointing class counsel, the court may:

9     (I) Consider any other matter pertinent to counsel's ability to  
10    fairly and adequately represent the interests of the class.

11    (II) Direct potential class counsel to provide information on  
12    any subject pertinent to the appointment and to propose terms for  
13    attorney's fees and nontaxable costs.

14    (III) Make further orders in connection with the appointment.

15    (2) (A) The court may designate interim counsel to act on behalf  
16    of the putative class before determining whether to certify the  
17    action as a class action.

18    (B) If there is only one applicant for appointment as class  
19    counsel, the court may appoint that applicant only if the applicant  
20    is adequate under subparagraphs (B) and (C) of paragraph (1).  
21    If more than one adequate applicant seeks appointment as class  
22    counsel, the court shall appoint the applicant best able to represent  
23    the interests of the class.

24    (h) In an action certified as a class action, the court may award  
25    reasonable attorney's fees and nontaxable costs authorized by law  
26    or by agreement of the parties as follows:

27    (1) A claim for an award of attorney's fees and nontaxable costs  
28    shall be made by motion, subject to the provisions of this  
29    subdivision, at a time set by the court. Notice of the motion shall  
30    be served on all parties and, for motions by class counsel, directed  
31    to class members in a reasonable manner.

32    (2) A class member, or a party from whom payment is sought,  
33    may object to the motion.

34    (3) The court may hold a hearing and shall find the facts and  
35    state its conclusions of law on the motion.

36    (4) The court may refer issues related to the amount of the award  
37    to a special master or to a subordinate judicial officer.

38    (5) Reasonable attorney's fees and nontaxable costs shall not  
39    include fees and costs incurred litigating entitlement to attorney's  
40    fees and costs, including motions brought under this provision.

1     *SEC. 7. The provisions of this act are severable. If any*  
2     *provision of this act or its application is held invalid, that invalidity*  
3     *shall not affect other provisions or applications that can be given*  
4     *effect without the invalid provision or application.*

5     SECTION 1. ~~Section 40322.5 of the Health and Safety Code~~  
6     ~~is amended to read:~~

7     ~~40322.5.—(a) Notwithstanding any other provision of this~~  
8     ~~chapter, on and after July 1, 1994, the membership of the governing~~  
9     ~~board of each regional district, including any district formed on~~  
10    ~~or after that date, shall include (1) one or more members who are~~  
11    ~~mayors, city council members, or both, and (2) one or more~~  
12    ~~members who are county supervisors.~~

13    ~~(b) The number of those members and their composition shall~~  
14    ~~be determined jointly by the counties and cities within the district,~~  
15    ~~and shall be approved by a majority of the counties, and by a~~  
16    ~~majority of the cities that contain a majority of the population in~~  
17    ~~the incorporated area of the district.~~

18    ~~(c) The governing board shall reflect, to the extent feasible and~~  
19    ~~practicable, the geographic diversity of the district and the variation~~  
20    ~~of population between the cities in the district.~~

21    ~~(d) The members of the governing board who are mayors or~~  
22    ~~city council members shall be selected by a majority of the cities~~  
23    ~~in the district. The members of the governing board who are county~~  
24    ~~supervisors shall be selected by a majority of the counties in the~~  
25    ~~district.~~

26    ~~(e) If a district fails to comply with subdivisions (a) and (b), the~~  
27    ~~membership of the governing board shall be determined as follows:~~

28    ~~(1) In districts in which the population in the incorporated areas~~  
29    ~~represents 35 percent or less of the total county population,~~  
30    ~~one-fourth of the members of the governing board shall be mayors~~  
31    ~~or city council members, and three-fourths shall be county~~  
32    ~~supervisors.~~

33    ~~(2) In districts in which the population of the incorporated areas~~  
34    ~~represents between 36 and 50 percent of the total county~~  
35    ~~population, one-third of the members of the governing board shall~~  
36    ~~be mayors or city council members, and two-thirds shall be county~~  
37    ~~supervisors.~~

38    ~~(3) In districts in which the population of the incorporated areas~~  
39    ~~represents more than 50 percent of the total county population,~~

1 ~~one-half of the members of the governing board shall be mayors~~  
2 ~~or city council members, and one-half shall be county supervisors.~~  
3 ~~(4) The number of those members shall be determined as~~  
4 ~~provided in subdivision (b) and the members shall be selected~~  
5 ~~pursuant to subdivision (d).~~  
6 ~~(5) For purposes of paragraphs (1) to (3), inclusive, if any~~  
7 ~~number that is not a whole number results from the application of~~  
8 ~~the term “one-fourth,” “one-third,” “one-half,” “two-thirds,” or~~  
9 ~~“three-fourths,” the number of county supervisors shall be increased~~  
10 ~~to the nearest integer, and the number of mayors or city council~~  
11 ~~members decreased to the nearest integer.~~  
12 ~~(f) This section does not apply to a district if the membership~~  
13 ~~of the governing board of the district includes both county~~  
14 ~~supervisors and mayors or city council members on June 30, 1994.~~